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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,516	02/08/2002	Gilbert Wong	87154239-560002	3455
26453	7590	02/12/2004		
BAKER & MCKENZIE 805 THIRD AVENUE NEW YORK, NY 10022			EXAMINER PATEL, VINOD D	
			ART UNIT 3742	PAPER NUMBER
			DATE MAILED: 02/12/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,516

Applicant(s)

WONG ET AL.

Examiner

Vinod D. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 and 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a hair dryer, classified in class 34, subclass 99.
 - II. Claims 9-14, drawn to a curling iron, classified in class 219, subclass 225.
 - III. Claims 15-20, drawn to a hair curling roller, classified in class 219, subclass 222.
 - IV. Claims 21-27, drawn to a facial care appliance, classified in class 392, subclass 385.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I & II & II & IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are hair dryer, hair curling iron, hair curling roller and facial care appliance..
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Park Eunhee on 2-5-04 a provisional election was made without traverse to prosecute the invention of group III, claims 15-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-14 and 21-27 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 15-16, 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaizuka (US5941253).

Kaizuka discloses a hair curling roller (A) having a hollow cylindrical shell (2), characterized in that the cylindrical shell (2) and a glove (4) composed of a blended material (column 1, line38-41) of thermo-resistant material and ion-powders, the ion-powders (column 2, table1) is composed of a blended mixture of powders including anhydrous silicon (SiO.sub.2), aluminum oxide (AL.sub.2O.sub.3), iron oxide (Fe.sub.2O.sub.3), calcium oxide (CaO), magnesium oxide (MgO), potassium oxide(K.sub.2O), sodium oxide (Na.sub.2O) and manganese oxide (MnO), the hair curling roller comprising a heating element (7) within cylindrical shell (2).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaizuka (US5941253) as applied to claims 15-16, 18-20 above.

Kaizuka discloses the claimed invention except for the size of the particles of the ion-powders being less than 10 μm in diameter. Kaizuka is silent regarding particular size of the particles., but discloses a firm curl in a short period of time thus preventing damage to hair thanks to the negative ions generated from the surface of the cylindrical shell (2) and a glove (4). It would have been obvious matter of design choice to have the size of the particles of the ion-powders being less than 10 μm in diameter, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Drago (US6079422), Gray (US6064051), Hafey (US5124532), Gibbon (US5030820), Henderson (US4538630), Pirotte (US4147927), Quirk (US4109667), Wallin (US3911935), Minagawa (US3973574), Weise (US4097718), Ookura (US5743278), Bullock (US4447705) relate to hair setting devices.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is 703-308-5227. The examiner can normally be reached on 7.30 A.M. TO 4.00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 703-308-2634. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Vinod Patel
Patent Examiner



EDWARD K. LOOK
SUPERVISORY PATENT EXAMINER
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2/9/04